

FEB 10 1978

MICHAEL ROSAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-856

PHILLIPS PETROLEUM COMPANY, *Petitioner,*

v.

IRL SHUTTS, as Executor of the Estate of Althea Shutts, Individually, and as representative of all that class of gas royalty owners under Phillips Petroleum Company oil and gas leases in the Hugoton-Anadarko area, *Respondents.*

SUPPLEMENT TO THE PETITION

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SUPPLEMENT TO THE PETITION

Pursuant to Rule 24(5) of the Rules of the Supreme Court of the United States, Petitioner Phillips Petroleum Company ("Phillips") submits this supplement to the petition to call attention to an intervening matter not available at the time of the filing of the petition.

On February 1, 1978, the Texas Supreme Court in *Phillips Petroleum Company v. Stahl Petroleum Company*,¹ No. B-6813 (Tex. Sup.) granted Phillips' Ap-

¹ The case being reviewed is reported below in *Stahl Petroleum Company v. Phillips Petroleum Company*, 550 S.W. 2d 360 (Tex. Civ. App.—Amarillo, 1977).

plication for Writ of Error for the purpose of reviewing the question of whether the award of interest on additional royalty payments for the period during which the ascertainment of the amount due was delayed by operation of federal law is contrary to Texas Law. (See Letter from Clerk, Texas Supreme Court, Feb. 1, 1978 at App. 1a-2a) The *Stahl* case, like the instant case, arises out of the Hugoton-Anadarko rate making area and the issuance of Federal Power Commission Opinion No. 586.

The Kansas Supreme Court specifically relied on federal cases applying Texas law and on the *Stahl* case in holding against Phillips in the instant case.* The recent granting of the Application for Writ of Error in the *Stahl* case indicates, however, that the law in Texas, upon which the federal decisions are grounded, is by no means settled as respondents argue

* As the Kansas Supreme Court stated:

In passing we also note a long line of federal cases have concluded Texas law permits—and equity requires—the award of interest on suspense royalties under similar circumstances. (*Phillips Petroleum Company v. Adams*, 513 F.2d 355, 365 [5th Cir. 1975], cert. denied, 423 U.S. 930, 46 L.Ed.2d 259, 96 S.Ct. 281; *First Nat. Bank of Borger v. Phillips Petroleum Co.*, 513 F.2d 371 [5th Cir. 1975], cert. denied, 423 U.S. 930, 46 L.Ed.2d 259, 96 S.Ct. 281; *Phillips Petroleum Co. v. Riverview Gas Compression Company*, 513 F.2d 374 [5th Cir. 1975], cert. denied, 423 U.S. 930, 46 L.Ed.2d 259, 96 S.Ct. 281; *Phillips Petroleum Co. v. Hazlewood*, 534 F.2d 61 [5th Cir. 1976]; *Fuller v. Phillips Petroleum Co.*, 408 F.Supp. 643 [N.D. Tex. 1976]; and *Phillips Petroleum Co. v. Hazlewood*, 409 F. Supp. 1193 [N.D. Tex. 1975].)

In addition, the Texas Civil Court of Appeals recently awarded interest on suspended royalties in *Stahl Petroleum Co. v. Phillips Petroleum Co.*, 550 S.W.2d 360 (Tex. Civ. App. No. 8762, filed April 6, 1977.) This case also arises out of the Hugoton-Anadarko area and the issuance of FPC Opinion No. 586. (Appendix to Petition for Certiorari at 56a)

and as the Kansas Supreme Court believes. Indeed, in two of the cases cited by the Kansas Supreme Court in support of its position, *Phillips Petroleum Company v. Hazlewood*, 534 F.2d 61 (5th Cir. 1976), *pending on motion for rehearing*, No. 76-1290, and *Fuller v. Phillips Petroleum Company*, 408 F. Supp. 643 (N.D. Tex. 1976), *appeal pending*, No. 76-2179 (5th Cir.), the United States Court of Appeals for the Fifth Circuit has stayed further consideration pending resolution of the interest issue by the Texas Supreme Court. (See Letter from Clerk, United States Court of Appeals for Fifth Circuit at App. 3a)

The recent action of the Texas Supreme Court, and the reliance by federal courts and the Kansas Supreme Court on what they may have mistakenly believed to be Texas law, illustrates the need for Supreme Court guidance on the important issue of whether the award of interest for the period when the final payment of additional royalties was delayed by operation of federal law so offends notions of fairness as to be violative of the Due Process Clause.

Respectfully submitted,

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APPENDIX

APPENDIX

THE SUPREME COURT OF TEXAS

P. O. BOX 12248 CAPITOL STATION
AUSTIN, TEXAS

February 1, 1978

CHIEF JUSTICE

JOE R. GREENHILL

CLERK

GARSON R. JACKSON

JUSTICES

ZOLLIE STEAKLEY

JACK POPE

SEARS MCGEE

JAMES G. DENTON

PRICE DANIEL

SAM D. JOHNSON

CHARLES W. BARROW

T. C. CHADWICK

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Corporate Legal Staff
Amarillo, Texas 79120

2a

Mr. John C. Chambers, Atty
Stone, Stone & Chambers
1701 American National Bank Bldg.
Amarillo, Texas 79101

RE: B-6813: PHILLIPS PETROLEUM COMPANY v. STAHL PETRO-
LEUM COMPANY
Seventh Court of Civil Appeals No. 8762
108th District Court of Potter County No.
55741

Gentlemen:

Today, the Supreme Court of Texas granted the above
referenced application for writ of error on points 1, 5 and
8.

This cause has been set for submission and oral argument
for Wednesday, February 22, 1978 at 9:00 a.m.

Please indicate on the enclosed form which attorney/s will
present oral argument, (see Texas Rules of Civil Proce-
dure No. 498), and return the form to the Clerk's Office
at your earliest convenience.

Also enclosed is a cost bill for the petitioner.

Very truly yours,

GARSON R. JACKSON, Clerk
/s/ by MARY M. WAKEFIELD
Mary M. Wakefield, Deputy

Encl: argument form
cost bill-petitioner

3a

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

OFFICE OF THE CLERK

June 13, 1977

EDWARD W. WADSWORTH
CLERK

TO ALL COUNSEL OF RECORD

- No. 76-1290—Phillips Petroleum Co. vs. Grady
Hazlewood; Alstar Production Corp.
No. 76-2144—Phillips Petroleum Co. vs. Riverview
Gas Compression Co., Etc., Et Al.
No. 76-2179—R. P. Fuller, Et Al vs. Phillips
Petroleum Company.
No. 76-2535—Van Norman Oil Co. vs. Phillips
Petroleum Co. vs. American Petrofina
Company of Texas.

Dear Counsel:

The Court has asked me to advise you that it will withhold
action in the above matters until the adjournment of the
Supreme Court of Texas this summer, in hopes that ac-
tion on the applications for writ of error will by that time
have been accomplished.

Very truly yours,

EDWARD W. WADSWORTH
CLERK

/s/ By GILBERT F. GANUCHEAU
Gilbert F. Ganucheau
Chief Deputy Clerk